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Casey asks Justice to prosecute NBC

CIA director says 'Today' story on U.S. intelligence operations ran afoul of espionage law; government is considering whether to go after 'Washington Post' also

A CIA Director William J. Casey urged the Justice Department last Monday (May 19) to bring criminal charges against NBC News for broadcasting classified information on the U.S.'s communications intelligence activities as part of a *Today* show report that morning on the trial of an accused spy, Ronald D. Pelton.

In a statement issued Monday afternoon, Casey said the report may have violated a 1950 federal espionage act prohibiting publication of such information. "My statutory obligation to protect intelligence sources and methods requires me to refer this matter to the Department of Justice," he said.

At week's end, the CIA was, according to the White House, also considering pressing the Justice Department to charge the *Washington Post* on the same grounds for its publication of a lengthy story on the Pelton case on Wednesday, May 21. During a press briefing Wednesday, White House spokesman Larry Speakes said the article is "presently being analyzed by the CIA to see if they have any specific problems with it. They have not indicated either way." CIA spokeswoman Sharon Foster refused to comment on the situation involving the *Post*.

Pelton, a former employee of the National Security Agency, went on trial last week for allegedly giving Soviet agents information on the NSA's efforts to intercept communications within the Soviet Union. In reporting on the jury selection for the trial, NBC correspondent James Polk said, "Pelton apparently gave away one of the NSA's most sensitive secrets, a project with the code name Ivy Bells believed to be a top-secret eavesdropping program by American submarines inside Soviet harbors."

It's up to the Justice Department to decide whether to prosecute NBC under the law, and last week it was giving no indication what it might do. Justice Department spokesman Patrick Korten said: "Nothing has been decided on that score. We've sent it down to the criminal division and they'll take a look at it." He said there is a possibility the division would report back this week.

Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press, said she thought it unlikely the Justice Department would go after NBC on the basis of information in Polk's story, which she called "nonspecific" and "innocuous." She said the Justice Department doesn't want to bring charges unless it has some strong evidence. "I doubt this is such a case."

Quoting "sources familiar with the case," the *Post* story said the Soviets, after receiving

information from Pelton, uncovered "a highly successful U.S. operation that used sophisticated technology" and submarines to intercept Soviet communications. The U.S. has "discovered physical evidence that the operation was compromised," the story said. "U.S. intelligence officials are convinced the high-technology device used in the operation was retrieved by the Soviets and is in their hands."

The story that appeared May 21 was different from a version Bob Woodward and Patrick E. Tyler had written for publication May 4. In response to administration pressure and out of concern for national security, the May 21 story said, the *Post* decided to delete from the story a description of the technology that Pelton allegedly betrayed.

The pressure, which began after Woodward and Tyler began asking administration sources for comment, was heavy. On May 2, according to the May 21 story, Casey met with senior editors of the *Post* and threatened to seek prosecution of the paper under the espionage law if it published the original story. And on May 10, the story said, President Reagan telephoned *Post* Chairman Katharine Graham, urging the *Post* not to publish it. The story said the paper also heard from other administration officials, including Vice Admiral John M. Poindexter, Reagan's national security affairs adviser, who said that publication of the article could endanger national security.

In the May 21 story, *Post* Executive Editor Benjamin C. Bradlee said the *Post* decided to delete the description, even though he continued to believe the original article contained nothing the Soviets didn't already know, because the paper had been "unable fully to judge the validity of the national security objections of senior officials" and because of the concerns of the *Post*'s lawyers.

In a speech before the American Jewish Committee in Washington two weeks ago, Casey made clear his desire to use the 1950 law to stop the public flow of information about the nation's eavesdropping activities. He said did not favor prosecution of past violations. "But I strongly believe that if we are to protect our security as a nation and the safety of our citizens in this age of terrorism and intercontinental missiles the law now on the books to protect a very narrow segment of information—that dealing with communications intelligence—must now be enforced" (BROADCASTING, May 12).

NBC News had little to say about the Casey allegation. NBC News spokeswoman Sharon Metcalfe declined to comment on the matter beyond saying it has been referred to counsel for review.

Polk's report was not repeated Monday evening on the *NBC Nightly News*. Metcalfe said, not because of the controversy it gener-

ated, but because it wasn't newsworthy enough. "The selection of a jury is not big news," she said. *Nightly News* anchor Tom Brokaw reported Casey's action briefly Monday night, she said, and correspondent Carl Stern broadcast a "package on the brouhaha" on Tuesday night.

Kirtley, of the Reporters Committee, said Casey's action against NBC and his threatened action against the *Post* were just the latest in a long line of administration activities designed "to stifle the flow of information to the public," including efforts to emasculate the Freedom of Information Act and the firing of people suspected of leaking sensitive information to the press, she said.

In the case of the *Post*, Kirtley said, the "beauty" of Casey's tack of threatening prosecution under the espionage law is that it has enabled the government to practice prior restraint of the press without having to prove in court that the story was detrimental to the national security.

Casey may have had ulterior motives in acting against NBC, Kirtley said. He may have been "firing a salvo" at NBC for its interviewing suspected terrorist Abul Abbas and not revealing his location (BROADCASTING, May 12), she said, or he may have been trying to increase the pressure on the *Washington Post*. □